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May 4, 1987

Mr. Samuel Lewis, Director
Arizona Department of Corrections
1601 West Jefferson
Phoenix, Arizona 85007

Ms. Patricia V. Gilbert, Chairman
Arizona Board of Pardons and Paroles
1645 West Jefferson, Suite 326
Phoenix, Arizona 85007

Re: I87-063 (R86-156)

Dear Mr. Lewis and Ms. Gilbert:

We have been asked whether prisoners, certified as eligible for parole pursuant to A.R.S. § 31-233(I), retain parole eligibility when there is no longer a bed shortage. We also address whether that parole eligibility is continuous or if it terminates when adequate bed space is obtained, thus allowing the Director of the Arizona Department of Corrections ("Director") to recertify inmates upon a subsequent shortage of bed space.

A.R.S. § 31-233(I) provides:

At any given time that there is a shortage of beds available for inmates within the state department of corrections, the parole eligibility as set forth in §§ 31-411 and 14-1604.06 may be suspended for any inmate not previously convicted of a felony who has been sentenced for a class 4, 5 or 6 felony, not involving the use or exhibition of a deadly weapon or dangerous instrument or the infliction of serious physical injury pursuant to § 13-604, and such inmate shall be continuously eligible for parole.

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Statutes are to be interpreted as a harmonious whole so that all parts are given their intended effect. Sandblom v. Corbin, 125 Ariz. 178, 183, 608 P.2d 317, 322 (App. 1980). Furthermore, the words of a statute are to be given their ordinary meaning. Dessauer v. Arizona Department of Economic Security, 141 Ariz. 384, 386, 687 P.2d 392, 394 (App. 1984).

With these rules of statutory construction in mind, we believe the phrase in A.R.S. § 31-233(I) "at any given time that there is a shortage of beds" modifies the entire section, including the phrase "and such inmate shall be continuously eligible for parole." Thus, the modifier limits the period of time that the statute with its special parole provision is operative. "Given" in this context is synonymous with fixed or specified. Webster's Third New International Dictionary, (1976). It is, therefore, only during this fixed or specified period of a bed shortage that certain inmates remain continuously eligible for parole.

Were these inmates to remain eligible for parole pursuant to this statute after adequate bed space is available, it would contravene the purpose of the statute, which is to "relieve prison overcrowding by providing an early parole to certain offenders." Berry v. State Department of Corrections, 144 Ariz. 126, 127, 696 P.2d 216, 217 (App. 1985). When there is no longer overcrowding, the need no longer exists and the statute becomes inapplicable until such time as there is another bed shortage. In the event of a new bed shortage, the Director may again certify inmates for parole eligibility pursuant to this statute.

Sincerely,



BOB CORBIN
Attorney General

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